Integrity in ESG Reporting: Navigating the perils and pitfalls of Greenwashing and Greenhushing

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January 2024

From regulatory investigations and reviews to Royal commissions, Senate enquiries, landmark court orders, injunctions, corporate penalties, ceasing of trade, corrupt practices investigations, and abuses of power – corporate accountability and responsibility has never been as critical.

Company directors, executives, stakeholders, and key management personnel/responsible parties must ensure the accuracy, reliability, and integrity of company data that they not only represent, but champion, should be reliable, dependable and hold up to scrutiny against legal and regulatory frameworks. The integrity of these reports should provide the public, the stakeholder, and in many cases the investor, with both a quantitative and qualitative representations of the organisation's performance.

As the global shift for the corporate world to embrace ESG (Environmental, Social and Governance) principles, ESG reporting has become a key indicator to provide stakeholders, current and future investors with the means, information and insight to assess a company's non-financial performance through a benchmarked and evidence-based report. (Sciarelli et al, 2021).

As such, transparency, integrity, accountability, clarity, and reliability of company ESG data is key.

By contrast, there are however, mechanisms that can derail the accuracy and reliability of ESG reports, and these have not only seen organisations around the globe suffer reputational damage, but also face significant financial penalties. As a result, regulatory bodies are taking a firmer stance against the instances of two key proponents of this: Greenwashing and Greenhushing.

What do we mean by Greenwashing?

> *Greenwashing refers to the deceptive practice employed by companies to create a misleading perception or convey a false impression regarding the environmental sustainability of their products and/or services.*

(Kopanakis, 2003)

To this, Greenwashing aims to deceive consumers with the belief that their products or services possess a greater positive impact on the environment than they presently do (Ghitti et al, 2023).

What do we mean by Greenhushing?

> *Greenhushing is the deliberate suppression or omission of environmental information by corporations to downplay their ecological impact. As an organisations internal and external stakeholders have an increasing demand on transparency and accountability, this practice poses challenges to corporate reputation management.*
>
> (Kopanakis, 2023)

Further, organisations may choose to pursue this avenue in order to protect their public image or avoid economic concerns, litigation or competitive disadvantages. (Ettinger et al, 2022).

Greenwashing/Greenhushing in action

At a local level, Australia has been a witness to a number of cases in which the Australian Securities and Investment Commission (ASIC), and the Australian Competition and Consumer Commission (ACCC) had commenced legal proceedings against organisations whose practices do not align to their ESG or environmental/sustainability claims.

<u>ASIC commences greenwashing case against Active Super</u>

> *ASIC has commenced civil penalty proceedings in the Federal Court against LGSS Pty Limited (Active Super) alleging misleading conduct and misrepresentations to the market relating to claims it was an ethical and responsible superannuation fund.*
>
> *Active Super represented on their website that they eliminated investments that posed too great a risk to the environment and the community, including tobacco manufacturing, oil tar sands and gambling. Active Super also stated that they had added Russia to their list of excluded countries, following the invasion of Ukraine.*
>
> *ASIC alleges Active Super exposed its members to investments it claimed to restrict or eliminate.*
>
> *ASIC alleges ESG misrepresentations were made on Active Super's website, disclosure documents and on Facebook, Instagram and LinkedIn.*
>
> *11 August 2023*
>
> Excerpt only, for the fill article see https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-215mr-asic-commences-greenwashing-case-against-active-super/

MOO Premium Foods gives undertaking after ACCC investigates 'ocean plastic' claims

The ACCC has accepted a court-enforceable undertaking from yoghurt manufacturer MOO Premium Foods Pty Ltd (MOO) following an investigation into MOO's '100% ocean plastic' representations on its yoghurt packaging, website, and social media pages.

Between at least November 2021 and the date of the undertaking, MOO claimed that its yoghurt tubs were made from '100% ocean plastic', which the ACCC was concerned gave the impression they were made from plastic waste collected directly from the ocean, when this was not the case.

While MOO included disclaimers on the top and back of the packaging, the ACCC considered they were insufficient to overcome the headline representation of '100% ocean plastic'.

MOO has admitted in the undertaking it has given the ACCC that the '100% ocean plastic' representations likely contravened the Australian Consumer Law, which prohibits false or misleading representations.

"Our investigation revealed that the plastic resin used in the manufacture of MOO's yoghurt packaging was collected from coastal areas in Malaysia, and not directly from the ocean," ACCC Commissioner Liza Carver said.

"Making false statements about a product's environmental or sustainability qualities can mislead consumers, as well as putting the businesses making genuine claims at a competitive disadvantage."

"It is important that environmental and sustainability claims by businesses are correct as they are a key influence on consumer choices and what people spend their money on," Ms Carver said.

28 November 2023

Excerpt only, for the fill article see https://www.accc.gov.au/media-release/moo-premium-foods-gives-undertaking-after-accc-investigates-ocean-plastic-claims

ASIC commences greenwashing case against Vanguard Investments Australia

ASIC has lodged civil penalty proceedings in the Federal Court against Vanguard Investments Australia, alleging misleading conduct in relation to claims about certain environmental, social and governance (ESG) exclusionary screens applied to investments in a Vanguard fund.

ASIC alleges Vanguard made false and misleading statements and engaged in conduct liable to mislead the public in representing that all securities in the Vanguard Ethically Conscious Global Aggregate Bond Index Fund (Hedged) (Fund) were screened against certain ESG criteria. The Fund was marketed to investors seeking, amongst other things, securities with an ethically conscious screen.

Investments held by the Fund were based on an index called the Bloomberg Barclays MSCI Global Aggregate SRI Exclusions Float Adjusted Index (Index).

Vanguard claimed the Index excluded issuers with significant business activities in a range of industries, including those involving fossil fuels.

However, ASIC alleges that ESG research was not conducted over a significant proportion of issuers of bonds in the Index and therefore the Fund.

As at February 2021, ASIC alleges the Index and the Fund included issuers that violated the applicable ESG criteria, including:

- *for the Index, 42 issuers which collectively issued at least 180 bonds; and*
- *for the Fund, at least 14 issuers that collectively issued at least 27 bonds.*

ASIC alleges that these bonds exposed investor funds to investments which had ties to fossil fuels, including those with activities linked to oil and gas exploration.

25 July 2023

Excerpt only, for the fill article see https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-196mr-asic-commences-greenwashing-case-against-vanguard-investments-australia/

Accurate reporting practices

In order to showcase the gravitas, significance and critical nature of accurate representation of all form of ESG metrics, a series of frameworks, ratings agencies and indices provide benchmarks for ESG reporting organisations.

In essence, based on an entity's location or jurisdiction, the organisation may report their results to one, or a number of reporting bodies.

Further, an organisation may, for greater marketability, stakeholder/shareholder awareness and promotion of ESG alignment, choose to report their results to multiple reporting bodies. For brevity, a brief, sample list of these reporting bodies is provided below, with a summary of their respective services included for reference.

Dow Jones Sustainability Indices (DJSI)
https://www.spglobal.com/esg/performance/indices/djsi-index-family

Introduced in 1999, the Dow Jones Sustainability Indices (DJSI) constitute a series of worldwide benchmarks crafted to evaluate the stock performance of premier companies within 61 industries, utilizing criteria encompassing economic, environmental, and social considerations.

Global Reporting Initiative (GRI)
https://www.globalreporting.org

With a history spanning 25 years, the GRI has taken a leading role in shaping international standards for organizational communication and accountability concerning environmental, economic, and social impacts.

Sustainability Accounting Standards Board (SASB)
https://sasb.org/standards/

SASB Standards provide organisations with the ability to disclose industry-specific information on sustainability-related risks and opportunities that may influence or impact cash flows, access to finance, or cost of capital in the short, medium, or long term.

Developed through a process involving evidence-based research and input from companies, investors, and experts, these standards identify key sustainability issues for decision-making across 77 industries.

Further reporting bodies, of equal, international significance include:

Institutional Shareholder Services (ISS)
https://www.issgovernance.com/about/about-iss/

Morgan Stanley Capital International ESG Research (MSCI ESG)
https://www.msci.com/who-we-are/about-us

FTSE4Good Index Series (London Stock Exchange Group of Companies - LSEG)
https://www.lseg.com/en/ftse-russell/indices/ftse4good

Conclusion

As has been evidenced, accurate ESG reporting is critical, and is as true and reflective of an organisation's performance as any report an organisation will produce.

Integrity in this reporting must be maintained for an organisation to best represent its internal and external stakeholders; shareholders utilise these reports for investment decision-making, employees may choose organisations based on their ESG alignment, regulators are continuing to pursue organisations demonstrating false and misleading claims, and regulatory scrutiny will only increase as greater accountability will be expected.

Semper Veritas.

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ASIC commences greenwashing case against Vanguard Investments Australia - https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-196mr-asic-commences-greenwashing-case-against-vanguard-investments-australia/

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Sustainability Accounting Standards Board - https://sasb.org/standards/

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